

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on January 8, 1999
at 3:00 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Mike Taylor (R)
Sen. Bill Wilson (D)

Members Excused: Sen. Ken Miller (R)

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jyl Scheel, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 98, 1/8/1999; SJ 3,
1/8/1999; SB 40, 1/8/1999
Executive Action: SB 9; SB 29

HEARING ON SB 98

Sponsor: SENATOR KEN MESAROS, SD 25, CASCADE

Proponents: Bob Lane - MT Department Fish, Wildlife & Parks
Jerry Wells, Montana Council of Trout Unlimited
Montana Chapter of the American Fisheries Society
Mike Murphy, Montana Water Resources Association,
Montana Farmers Union
Montana Farm Bureau
John Munding, Montana Stockgrowers Association
Montana Public Lands Council
Association of State Grazing Districts
Robin Cunningham, Fishing Outfitters Association of
Montana
Stan Bradshaw, Former Executive Director of Trout
Unlimited
Bill Snoddy, McDonald Gold Project
Van Jamison, Montana Wildlife Federation.

Opponents: None

Opening Statement by Sponsor:

SENATOR MESAROS, SD 25, CASCADE, presented SB 98 at the request of the Environmental Quality Council. He briefly referred to a portion of the report, "Montana Department of Fish, Wildlife & Parks' Water Leasing Study". **EXHIBIT(nas05a01)** Most of what is in the bill is in the first four pages. In 1989 the Legislature passed HB 707 directing the Department of Fish, Wildlife and Parks and the Department of Natural Resources and Conservation to conduct and coordinate an instream flow water leasing study. The resulting statutes were revised in 1991, 1993 and 1995. Currently, there are 13 streams designated and leases have been finalized on all but five of the designated streams. It is time to review the process. This bill has been already been scrutinized by the EQC and water subcommittee starting in September, 1997, and continuing through several reviews to September, 1998. The subcommittee recommends the statute be extended another 10 years with another final study report process like this one in 2008. The cap on the number of streams DNRC can designate for leasing should be increased from 20 to 40 to encourage more leases and insure program credibility over the extension period. DNRC should have authority to negotiate up to 30 year terms on leases associated with investments and water conservation projects since the financial life of many of those public funded projects is 30 years. The salvage water should be available for lease by the private party. Those changes are indicated in the bill.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 4.6; Comments : None.}

Proponent Testimony:

Bob Lane, Chief Legal Counsel for Montana Department of Fish, Wildlife and Parks, testified in support of SB 98 as per attached **EXHIBIT** (nas05a02).

Jerry Wells, Montana Council of Trout Unlimited and the Montana Chapter of the American Fisheries Society, testified in support of SB 98. He liked the results of the EQC report to the 56th Legislature and feels the results of ten years of water leasing support removing the sunset provision which he hoped would be a subject of discussion by the committee. He spoke in support of increasing the streams DNRC can allow leases on from 20 to 40 as well as the increase for state water project leases to 30 years. **SEN. GROSFIELD** was acknowledged for his interest and support in water leasing predating the passage of the initial legislation.

Mike Murphy, Montana Water Resources Association testified in support of SB 98. He acknowledged that historically water leasing has been a very contentious issue but feels DFWP has implemented a good approach with respect to the holders of water rights and land owners. He feels that due to the contentious nature of the issue it is important to retain the sunset clause and a limit on the number of leases be retained. **Mr. Murphy** was also asked to indicate support on behalf of the **Montana Farmers Union** as well as **Montana Farm Bureau**.

John Mundinger, Montana Stockgrowers Association, Montana Association of State Grazing Districts and Montana Public Lands Council spoke in support of SB 98. These organizations appreciate the manner in which the water leasing provisions have been implemented and are comfortable with continuing the program and the provisions of the bill. The **Stockgrowers** appreciate the continued monitoring and reporting requirements. They would prefer the sunset provisions not be removed until the final report has been submitted to document what the program has accomplished.

Robin Cunningham, Fishing Outfitters Association of Montana spoke in support of HB 98. They welcome instream leasing as an important component of wild trout management. They recognize the importance of the extended time available for the program and the increased number of small stream reaches available for use.

Stan Bradshaw former Executive Director of Trout Unlimited. Owner of a small publishing company publishing books on fly fishing spoke in favor of HB 98. He was involved in this bill ten years ago and was a chief lobbyist in favor of the bill. He is disappointed that there is still a sunset on the program. Also Section 3 requires approval of each stream lease by the DNRC, which seems to be unnecessary baggage after 10 years.

Bill Snoddy, Director of Public and Human Affairs for McDonald Gold Project, stated after careful review of this important legislation and the obvious results we have seen in the past 10 years, he thought it important to extend for another 10 year period to give the Instream Flow Program a chance to mature and quantify the results we are going to see. He encouraged support of this legislation.

Van Jamison, Montana Wildlife Federation, stated as one of the organizations that participated in discussions resulting in the development of the water leasing program, he would like to join in support of SB 98.

{Tape : 1; Side : A; Approx. Time Counter : 4.6 - 20.1; Comments : None.}

Opponent Testimony: None

Questions from Committee Members and Responses:

SENATOR GROSFIELD, noted striking "as defined in 85-2-102" in Section 1 of the bill. He did not remember discussion about this in the EQC process and wondered if it held any significance.

Larry Mitchell, stated it was his understanding it is simply a technical correction because 85-2-102 is nothing more than a definitional section of that law so it is not really necessary to cite it.

SEN. GROSFIELD, questioned why the effective date was made immediate instead of June 30 and did that make any difference.

Larry Mitchell did not think it mattered but would look into it further.

SENATOR MAHLUM questioned the reason for the ten year extension and the sunset clause again. **SEN. MESAROS** stated he felt the program was working well but EQC felt more comfortable in continuing the program with a ten year extension and a review at the end of that time. If the program continues on the same course, he did not foresee any problems.

SENATOR KEATING questioned if the eight leased streams were included in the 40 streams. **Bob Lane** responded the way he understands the law is you would subtract those 8 streams. If you have 20 you subtract 8 and you have 12 left. If you have 40 and subtract 8 you have 32 left. **SEN. KEATING** questioned the cost of the program. **Bob Lane** thought it was approximately \$33,000 per year with the revenue coming from a mixture of sources plus fishing license dollars. **SEN. KEATING** questioned if EQC's administrative costs were funded through that same source and **Bob Lane** responded yes.

SENATOR GROSFIELD thanked **SEN. KEATING** for suggesting a raise for EQC. He then questioned if it would be feasible to reimburse EQC for their costs in reviewing and reporting under the Federal guidelines for the Federal matching funds. **Bob Lane** stated he could look into that possibility.

{Tape : 1; Side : A; Approx. Time Counter : 20.1 - 27.5; Comments : None.}

Closing by Sponsor:

SENATOR MESAROS closed by saying he was sure the Environmental Quality Council would welcome a raise and he would leave it in the hands of this good committee to give that a full review. He believes that most of the concerns and questions surrounding the water leasing program have been answered. The program is working well, as indicated in the number of proponents, and he thanked them for all their support. He suggested that, after full review by the Water Subcommittee and the full Environmental Quality Council, it was their recommendation to extend the 10 year term and he encouraged the Committee to do so.

{Tape : 1; Side : A; Approx. Time Counter : 27.5 - 28.9; Comments : None.}

HEARING ON SJ3

Sponsor: **SENATOR VICKI COCCHIARELLA, SD 32, MISSOULA**

Proponents:

Patrick Heffernan, Montana Logging Association
Cary Hegreberg, Montana Wood Products Association
Janet Ellis, Montana Audubon
Don Allen, Western Environmental Trade Association
Bill Snoddy, McDonald Gold Project

Jeff Barber, Montana Environmental Information Center
Chris Galles, Montana Chamber of Commerce
Bud Clinch, Director, Department of Natural Resources and
Conservation
Terry Wells, Montana Council of Trout Unlimited.

Opponents: None.

Opening Statement by Sponsor:

SENATOR COCCHIARELLA stated she was the proud sponsor of SJ3. She serves as Co-Chair of the Environmental Quality Council with **SEN. MESAROS** and has served on the Environmental Quality Council for six years. In 1989 the most successful program for protecting Montana's waters was passed - the Voluntary Best Management Practices Act for Forestry. In the 10 years the program has been in place, the gains have been phenomenal. She was a young, newly elected Representative, not quite sworn in, when she first heard about this program and has followed its progress. She stated her pleasure at the success of this voluntary program. In this legislation she is asking the State Agencies to be role models for the implementation and refinement of Best Management Practices to reduce non-point source water pollution.

{Tape : 1; Side : A; Approx. Time Counter : 28.9 - 35.5; Comments : None.}

Proponent Testimony:

Patrick Heffernan, Staff Forester, Montana Logging Association and the Trade Association representing independent Logging Contractors in the State of Montana spoke in support of SJ3 as per **EXHIBIT (nas05a03)**

Cary Hegreberg, Montana Wood Products Association spoke in support of SJ3. He thanked **SEN. COCCHIARELLA** for recognizing their efforts in the Forest Products industry to protect water quality in the process of harvesting and transporting timber. For prospective purposes, he provided a series of photographs taken over the course of last summer at various recreation areas around the State noting loss of vegetation on the streambank, clear cutting, road building, handling of storage and toxic materials, sustained grade, etc. **EXHIBIT (nas05a04)**

{Tape : 1; Side : A; Approx. Time Counter : 35.5 - 38; Comments : Tape turned to Side B}

Janet Ellis, Montana Audubon, spoke in support of SJ3. She agreed the Forestry BMP's have been a model. There have been several Audubon members participate in the audit process as volunteers. She pointed out not all these BMP's are voluntary and the ones in the most sensitive areas, Streamside Management Zone, are actually mandatory. She suggested amending this Resolution after "voluntary" on Line 15, 18, 19 and 24, adding "and mandatory". Surely in the most sensitive areas there is a time and place for regulation and that is one of the things the wood products industry has been able to accept.

Don Allen, Environmental Trade Association spoke in support of this resolution. This whole effort started years ago and it is a success story that has proved itself. Education works better than a hammer anytime in terms of trying to get compliance and getting people to learn what the impacts are and to improve their practices. He felt that state agencies should be asked to comply with this and report back to EQC.

Bill Snoddy, McDonald Gold Project spoke in support of SJ3. After careful examination, McDonald Gold Project began adopting the BMP's the timber industry has used so successfully most notably in controlling sediment flow. The example set by the timber industry is a very high mark for anybody to achieve and it has been a goal of the McDonald Project to surpass that anyway possible. He feels this is a very worthwhile challenge for the state to take on and the counties to achieve the same results as those seen in the timber industry.

Jeff Barber, Montana Environmental Information Center spoke in support of SJ3. We support this resolution to let our state agencies know it is their job to take a leading roll in getting out front, implementing and refining the use of best management practices.

Chris Galles, Montana Chamber of Commerce spoke in support of SJ3.

Bud Clinch, Director, Department of Natural Resources and Conservation, stated he would like to go on record in concurring with all the statements made by all of the witnesses before him. As a state agency that is charged with managing a wide variety of resources, they have embarked on expansion of the implementation of BMP's and stand ready, willing and able to implement the provisions of SJ3. He urged concurrence.

Terry Wells, Montana Council of Trout Unlimited spoke in support of SJ3.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 5.6; Comments :
Side B of Tape 1 of 1}

Opponent Testimony: None.

Questions from Committee Members and Responses:

SENATOR GROSFIELD stated in the not too distant past, MEIC has testified several times to the ineffectiveness of BMP's in the forest industry and now they are supporting a bill that lauds the BMP's in the forest industry and should suggest that state agencies should follow the example. Has MEIC has changed their position? **Jeff Barber** answered he would take that to mean that it is our organization's position that the state agencies, charged with protecting our environment, need to take a leading roll in implementing BMP's. Whether that is to follow the model of the forest industry, which we have testified about in the past, in that instance this is not exactly the case but we think it is important that these agencies get out front and show the way. **SEN. GROSFIELD** asked **Jeff Barber** if he would agree the kinds of BMP's that the forest industry has implemented are the kinds of things that state agencies ought to be doing now. He answered amongst other things, probably yes.

SENATOR KEATING questioned if the forest practices were not without additional expense to the industry. **Patrick Heffernan** responded yes, most of that expense is being handled internally as part of operations referring to it as being part of the culture and now it is part of the modus operandi of any timber harvesting operation in the state. Had they not made some strides to do things on their own, the inevitable hammer falling on them would have cost far more.

SENATOR KEATING questioned if there was additional expense in DNRC to implement BMP's. **Mr. Clinch** responded he felt it went without saying that implementation of BMP's require additional effort and emphasis on the part of the landowner, lessee or operator and there is an additional cost associated with implementation. We think BMP's have been acceptable on the part of those affected by it because they feel they can implement those activities and the educational effort at a much more cost effective method than if the regulatory agency would have to develop a regulatory program to respond.

The most familiar cost is the cost associated with the actual educational effort that it takes to educate a community about such things. If this voluntary effort were duplicated they would be looking at \$300,000 to \$400,000.

{Tape : 1; Side : B; Approx. Time Counter : 5.6 - 10.1; Comments : None}

Closing by Sponsor:

SEN. COCCHIARELLA closed by thanking all the proponents. She feels all state agencies need to look at how they do business and do business right as there is a cost associated with doing it wrong. Regarding BMP's, in asking for a voluntary response from state agencies, we are not asking to give them more money to do that but to do the job right and to do the job we ask other people to do, other entities outside of government, incurring whatever those costs are. An additional cost savings is the educational materials have already been developed that state agencies could borrow, duplicate and pass out to train their employees. Not to say, some are not already doing it right, but we are encouraging them to take the roll in BMP's in protecting our water from non-point source pollution. She encouraged passage of this resolution.

{Tape : 1; Side : B; Approx. Time Counter : 10.1 - 11.4; Comments : None.}

HEARING ON SB 40

Sponsor: **SENATOR DUANE GRIMES, SD 20, CLANCEY**

Proponents:

Bud Clinch, Director, Department of Natural Resources and Conservation

Van Jamison, Missoula Electric Cooperatives.

Opponents: **None**

Opening Statement by Sponsor:

SENATOR GRIMES presented an issue that affects the power generation facility, owned by the State of Montana, located by Townsend. Years ago when Broadwater County needed further irrigation resources they built the dam and put in the river flow power generation facility that bases its generation capacity on natural river flow. Because of the deregulation environment the Department has some concerns. As a result of their concerns, there were also some concerns from electrical cooperatives around the state. He thanked **Wayne Wetzel**, from the Department, and **Van Jamison** who represents the Electrical Cooperatives, for being able to come up with some amendment language that satisfies all

parties. He passed out a sponsor authored amendment to the committee. **EXHIBIT(nas05a05)**

{Tape : 1; Side : B; Approx. Time Counter : 11.4 - 16.5; Comments : None.}

Proponent Testimony:

Bud Clinch, Director, DNRC, spoke in support of SB 40 as per **EXHIBIT(nas05a06)**.

Van Jamison, Missoula Electric Cooperative stated he was not here representing all coops but specifically Missoula Electric Coop. He stands in support of this bill that the sponsor has offered to amend. Their concern relates to the elimination of what would have been a reservation for Montana businesses from the power that is produced at a facility built with public funds in the State of Montana.

Hungry Horse and Libby Dam have been very important to Missoula Electric Coop. in being able to acquire inexpensive, reliable source of electricity. It is argued that any erosion of preference from publically owned facilities is a loss and one we would like to avoid if at all possible.

The amendment gives them flexibility to sell at the market price but also provides as well an opportunity for Rural Electric Coops like Missoula to take the price at the point of generation and say yes we are willing to accept that price and exercise our right of first refusal or no, this is too pricey, go ahead and sell it somewhere else. This is a good compromise that has been offered and with that Missoula Electric Coop would like to offer its support as well to SB 40.

{Tape : 1; Side : B; Approx. Time Counter : 16.5 - 25.1; Comments : None.}

Opponent Testimony: None.

Questions from Committee Members and Responses:

SENATOR GROSFIELD questioned what if the Department does not get any bids. **Ann Yates** responded we are like any other competitor, if we do not get any bids then we are out of luck.

SEN. GROSFIELD also questioned if there are no bids, this language says that a rural electric coop can meet the highest bid. If you do not get any bids, do they get it for nothing?

Ann Yates responded we are not bidding the power out. It is just like any other contract, you would go through negotiations. If there was no one else around that wanted to buy the power and a Rural Electric Coop wanted to buy the power then we would negotiate with the Rural Electric Coop. **SEN. GROSFIELD** stated it also says price equal. What if you have three coops that all want to take it at that price. **Ann Yates** responded we would have to sit down with all three. Obviously a ten-megawatt facility is not that big. That is an interesting issue that we have not considered. With the new deregulation there will be all kinds of competitors in the market we have not even considered, i.e. power marketers, power brokers, etc. We anticipate that those entities will bid a price probably equal to or higher than what the Rural Electric Coops are willing to pay.

SENATOR GROSFIELD questioned why a coop would even bid on the power. **Van Jamison** responded there may be circumstances where it would behoove us to do that where we wanted a block of power and wanted control over it. We would certainly be cognizant of what the market place was like. There is a certain attractiveness to owning blocks of power as opposed to being exposed to the vagary of the market. In the terms of these purchases, not only price will be included but also there will be a term to it. If you have a firm price for long term it might be worthwhile.

SENATOR GROSFIELD questioned in this dereg market are there any overtures being considered by the Department to sell the whole project? **Mr. Clinch** responded no. The Department is certainly open to consider that. They have had some tire kickers over the last few years but no serious offers.

Mr. Clinch then responded to **SEN. GROSFIELD's** question on what would happen if we did not have a bidder under that amendment? If we did not have a bidder we would be in precisely the situation that we think we would be in under the existing language. We would negotiate with whomever we thought might want to take our power to see if we could accept the bid and still operate at a profit. If there was no bidder and no one that would be willing to purchase it at the rate that would make it a profit for us, then perhaps we would not be operating. Our intent is to, in the event that situation arises, give us the maximum flexibility so that we can continue to make a profit, produce a revenue stream, pay off the bonds and continue to produce revenue for the rehabilitation of the water projects.

SENATOR KEATING referring to the Broadwater project as the only one referred to in this bill, asked if the Broadwater does not generate sufficient income to service the bonds entirely? Is Coal Tax money being used to offset the shortfall? **Mr. Clinch**

responded it was his understanding the revenues do offset the bonds. **Wayne Wetzel, DNRC** also reported they sold \$26MM dollars in Coal Tax back bonds, \$22.2M were tax exempt bonds and the rest were taxable bonds. The amount received from Montana Power has been making bond payments when due and, in the early years, there was not much left over. In these early years we were probably making \$300,000 a year to put into the hydro account.

SEN. KEATING asked what was the current balance on the bonds. **Wayne Wetzel** responded he was not certain of that number but could find out. The taxable bonds were a 10 year term and the tax exempt bonds were a 25 year term sold in 1987. **SEN. KEATING** stated there was about 10 years remaining on the bonds then and **Wayne Wetzel** replied yes.

Mr. Clinch stated the Department has no other power generation facilities for the record.

{Tape : 1; Side : B; Approx. Time Counter : 25.1 - 39.9; Comments : None}

Closing by Sponsor:

SEN. GRIMES thanked the committee for a good hearing. He offered an apology for not getting the amendment to Mr. Mitchell earlier. He offered if there was any further questions prior to executive action he would be happy to obtain information from either the Department or Mr. Jamison for the committee.

{Tape : 1; Side : B; Approx. Time Counter : 39.9 - 40.8; Comments : None}

EXECUTIVE ACTION ON SB 9

Motion/Vote: **SEN. KEATING** moved that **SB 9 DO PASS**. Motion carried unanimously 10-0.

EXECUTIVE ACTION ON SB 29

Motion/Vote: **SEN. MCCARTHY** moved that **SB 29 DO PASS**. Motion carried unanimously 10-0.

{Tape : 1; Side : B; Approx. Time Counter : 40.8 - 44; Comments : None}

ADJOURNMENT

Adjournment: 4:45 P.M.

SEN. WILLIAM CRISMORE, Chairman

JYL SCHEEL, Secretary

WC/JS

EXHIBIT (nas05aad)